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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 492

CLARENCE BRANDENBERG,

Appellant,

—v.—

PEOPLE OF THE STATE OF OHIO,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

JURISDICTIONAL STATEMENT

ALLEN BROWN
911 First National Bank Bldg.
Cincinnati, Ohio 45202

MELVIN L. WULF
ELEANOR HOLMES NORTON
156 Fifth Avenue
New York, N. Y. 10010

DAVID L. STERLING
BERNARD A. BERKMAN
Of Counsel

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CLARENCE BRANDENBERG,

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—v.—

PEOPLE OF THE STATE OF OHIO,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the Supreme Court of the State of Ohio entered on June 12, 1968, dismissing *sua sponte* the appeal from the Court of Appeals of the First Appellate District of Ohio, dated February 16, 1968, affirming the judgment of conviction rendered in the Court of Common Pleas, Hamilton County, Ohio on December 5, 1966. Appellant submits this statement to show that this Court has jurisdiction and that substantial questions are presented.

Opinion Below

There are no written opinions, either reported or unreported, in this case. The Judge assigned to write the opinion for the Ohio Court of Appeals died before completing it, and the Ohio Supreme Court issued no opinion.

Jurisdiction

This is an appeal from a conviction for violation of Ohio Revised Code ¶2923.13. The final judgment of the Ohio Supreme Court was entered on June 12, 1968 and the notice of appeal filed therein on June 25, 1968.

The jurisdiction of the Supreme Court to review the decision of the Ohio Supreme Court by direct appeal is conferred by Title 28, United States Code, Section 1257(2) and is sustained by *DeVeau* v. *Braisted,* 363 U. S. 744 (1960), and *Schware* v. *Board of Bar Examiners,* 353 U. S. 232 (1957).

Questions Presented

1. Whether Ohio Revised Code Sec. 2923.13, which prohibits advocacy of criminal syndicalism, violates the First and Fourteenth Amendments on its face.

2. Whether Ohio Revised Code Sec. 2923.13, which prohibits advocacy of criminal anarchy, violates the First and Fourteenth Amendments as construed and applied in this case.

3. Whether there was any evidence to sustain a conviction under Sec. 2923.13 of the Ohio Revised Code, as required by the due process clause of the Fourteenth Amendment.

Statutes Involved

Ohio Revised Code ¶2923.13. *Advocating criminal syndicalism.*

No person shall by word of mouth or writing advocate or teach the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform; or print, publish, edit, issue, or knowingly circulate, sell, distribute, or publicly display any book, paper, document, or written matter in any form, containing or advocating, advising or teaching the doctrine that industrial or political reform should be brought about by crime, sabotage, violence, or unlawful methods of terrorism; or openly, willfully, and deliberately justify, by word of mouth or writing, the commission or the attempt to commit crime, sabotage, violence, or unlawful methods of terrorism with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism; or organize or help to organize or become a member of, or voluntarily assemble with any society, group or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism.

Whoever violates this section shall be fined not more than five thousand dollars or imprisoned not more than ten years, or both.

Ohio Revised Code ¶2923.12. *Criminal Syndicalism.*

As used in Sections 2923.13 to 2923.15 inclusive of the Revised Code, "criminal syndicalism" is the doctrine

which advocates crime; sabotage, which is defined as the malicious injury or destruction of the property of another; violence; or unlawful methods of terrorism as a means of accomplishing industrial or political reform.

Statement of the Case

Appellant was indicted and convicted in the Court of Common Pleas, Hamilton County, Ohio for advocating "the necessity, or propriety of crime, violence, or unlawful methods of terrorism as a means of accomplishing political reform," and in a second count for voluntarily assembling "with a group or assemblage of persons formed to advocate the doctrines of criminal syndalism,"[1] both violations of Section 2923.13 of the Ohio Revised Code. For these crimes of advocacy and assembly, appellant was sentenced to a prison term of from one to ten years and fined $1,000.

The events upon which the conviction was based were depicted at trial in two films that were offered into evidence by the state (R. 15, 23). The announcer-reporter who helped make the film testified that he had received a telephone invitation from an unknown party to appear at a rally, identified to him as a Ku Klux Klan meeting to be held on private property (R. 4). He testified that on June 28, 1964 he helped make a sound film of portions of the meeting for showing on television with the consent and cooperation of the persons participating (R. 8).

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[1] Sentence has thus far been stayed. On August 26, 1968 counsel mailed to the Clerk of this Court a Motion to Continue Supersedeas Bond in Effect and an Entry Continuing Stay of Execution During Pendency of Appeal.

The film produced at trial showed that no crowd was gathered or onlookers present besides those participating in the meeting. Nor was any disturbance or call for violence, abstract or otherwise, evident from the film or transcript.

One scene showed ten to twenty hooded figures, some of whom carried long arms, gathered outdoors around a large wooden cross wrapped in rags. During the film the cross was lit[2] and voices in the crowd unidentified either in the film or elsewhere in the record, offered a series of incomplete phrases and political slogans, some derogatory of Negroes and in one instance of Jews (R. 15):

"I would like to"
"How far is the nigger going to—yeah"
"Over there"
"This is what we are going to do to the niggers"

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[2] William Morris, a longtime Klansman, who has written about the organization, was deposed about the meaning of the burning cross:

"It has a spiritual meaning to all Klan members, in the language of the ritualism, symbolism . . . . Now, we are reminded that the cross upon which our Saviour died, which is the criterion of character of every Klansman, prior to the crucification of Christ. The cross was an emblem of degradation and shame, and we are reminded that were it not for the shed [sic] of blood of Jesus Christ on that cross, our own lives would be full of degradation and shame. Now, the fiery cross has a tremendous spiritual significance to us, also, because we are reminded that Jesus Christ said, 'I am the Light of the World.' He also said, and then we are reminded that God placed the flaming sword, guarded the entrance to the Garden of Eden with a flaming sword and he guided the Children of Israel on their journey to the Promised Land by pillar of fire by night and pillar of cloud by day. So, when we add fire to the cross, we simply are proclaiming to the world our fiery zeal. Fire is the greatest purifier yet known to man. So, we symbolically stand before the world in that manner" (R. 186-187).

"I would like to ask—call this—Patrick"
"A dirty nigger"
"Send the Jews back to Israel"
"I'm for it"
"Let's give them back to the dark garden"
"Save America"
"Let's go back to constitutional betterment"
"Bury the niggers"
"We intend to do our part"
"Give us our state rights"
"Freedom for the whites"
"Nigger will have to fight for every inch he gets from now on"

Another scene in the same film depicted a man in a red hood, who announced in a calm and ordinary voice that this meeting was an organization meeting and that a march on Congress was planned:

"This is an organizers meeting. We have had quite a few members here today which are—we have hundred, hundreds of members throughout the State of Ohio. I can quote from a newspaper clipping from the Columbus, Ohio, Dispatch, five weeks ago Sunday morning. The Klan has more members in the State of Ohio than does any other organization. We're not a revengent organization, but if our president, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance taken.

"We are marching on Congress July the Fourth, four hundred thousand strong. From there we are dividing into two groups—one group to march on St. Augustine,

Florida, the other group to march into Mississippi. Thank you" (R. 15).

The second film taken indoors showed six hooded figures, some of them armed, and an unarmed figure in a red hood behind a table on which had been placed a Bible. He made virtually the same announcement, though somewhat shorter, as that made in the prior scene, omitting any reference to "revengeance" (sic) (R. 23). He added: "I can quote—personally, I believe the nigger should be returned to Africa, the Jew returned to Israel. Thank you" (R. 23).

The prosecution presented no other evidence except the various objects appearing in the film (R. 79), testimony intended to identify appellant as the hooded figure who made the two individual statements (R. 56, 97, 107), and testimony as to the location at which the meeting was held (R. 12). The prosecution presented no evidence of the nature of the Ku Klux Klan, of the presence of a clear and present danger or of any danger whatsoever surrounding the meeting. The state rested on the words and peaceful activities depicted in the film.

Although the defense did not introduce testimony, appellant submitted depositions and other written evidence from Klan officials (R. 134 *et seq.*) as to the fraternal nature of the Klan and its organizational prohibition against violence. In his deposition, James R. Venable, an attorney and Imperial Wizard (President) of the National Knights of the Ku Klux Klan Association of America reported:

"We do not tolerate [violence]. That is, when I say that, the Imperial officers or officers in the States, even in the Klaverns, violence gets all of us in trouble,

> and if we want to accomplish anything, we can't afford to violate the law. I have told all of our Klan groups as well as those belonging to the National Association [for the Advancement of White People] that we couldn't use any type of violence, we had to obey the laws, whether it was good or bad, if we could unify, use the ballot box, we could accomplish this race war as you might call it" (R. 157).[3]

The Court in charging the jury (R. 208-220) indicated that mere advocacy and assembly were sufficient to constitute violations of the statutes (R. 213-216). The Court's charge did not refer to clear and present danger or to any other First Amendment standard. Nor was there an instruction that the jury need find the aims and purpose of appellant's meeting or of the Klan. The Court charged *sua sponte* as to conspiracy on the assemblage count but did not offer a delimiting instruction on conspiracy in the area of First Amendment rights (R. 216-217). The appellant was convicted on both counts.

The constitutional questions were first raised by appellant's motion to quash the indictment and the memorandum in support thereof on the ground that the statute was unconstitutional on its face and as applied because it violated the First and Fourteenth Amendments.[4] The motion was overruled on February 24, 1965 without opinion.[5] After some delay, the case proceeded to trial in November 1966.

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[3] For other testimony on the philosophy of the Klan and its organizational restriction against violence, see R. 137, 183-184.

[4] Certified Record, Court of Appeals, First Appellate District of Ohio, Motion to Quash; Memorandum in Support of Motion to Quash.

[5] *Id.*, Entry Overruling Motion to Quash.

After trial appellant renewed the First Amendment questions and raised the objection that the verdict was against the evidence.[5a]

On appeal to the Court of Appeals of the First Appellate District of Ohio, appellant argued that his First and Fourteenth Amendment rights had been violated and that the state had violated due process by failing to submit any evidence that would have sustained a conviction.[6] The Court affirmed without opinion.

On appeal to the Ohio Supreme Court, appellant again raised the constitutional questions asserted below.[7] The Ohio Supreme Court *sua sponte* dismissed the appeal for failure to raise a substantial question but issued no opinion.

The Questions Are Substantial

Appellant's conviction rests upon a criminal syndicalism statute whose language drastically curtails First Amendment freedoms. The Ohio courts have found the statute to be free from constitutional defect. Since the statute involved does not so much as approach the required First Amendment standards laid down by this Court, jurisdiction should be noted.

1. Section 2923.13 is unconstitutional on its face because it contains language almost identical to language held to violate the First Amendment in prior decisions of this

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[5a] *Id.*, Motion for New Trial.

[6] *Id.*, Assignments of Error and Brief of Defendant-Appellant.

[7] Certified Transcript of Record, Supreme Court of Ohio, Memorandum in Support of Jurisdiction.

Court. In particular, the statute struck down in *Keyishian* v. *Board of Regents,* 385 U. S. 589 (1967) is a virtual replica of Sec. 2923.13.[8]

Language held vague in *Keyishian* appears almost verbatim in the opening lines of Sec. 2923.13, although the requirement of wilfulness and deliberateness in the statute in *Keyishian* made it preferable to the statute at bar.[9] This Court found the "defect of vagueness" in language that punished one who "'by word of mouth or writing wilfully and deliberately advocates, advises or teaches the doctrine' of forceful overthrow of government." 385 U. S. at 599. This Court disapproved that language because "mere advocacy of abstract doctrine is apparently included" and because the language "could reasonably be construed to cover mere expression of belief." 385 U. S. at 600, 601. Like the New York statute at issue in *Keyishian* the Ohio statute here

> "is plainly susceptible of sweeping and improper application. It may well [restrain] one who merely advocates the doctrine in the abstract without any attempt to indoctrinate others, or incite others to action in furtherance of unlawful aims. See *Herndon* v. *Lowry,* 301 U. S. 242 . . . *Yates* v. *United States,* 354 U. S. 298 . . . *Noto* v. *United States,* 367 U. S. 290 . . . *Scales* v. *United States,* 367 U. S. 203 . . . " 385 U. S. at 599-600.

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[8] Though *Keyishian* was a test oath case and this is a criminal conviction, this Court has said: "Where, as here, protected freedoms of expression and association are similarly involved, we see no controlling distinction in the fact that the definition is used to provide a standard of criminality rather than the contents of a test oath." *Dombrowski* v. *Pfister,* 380 U. S. 479, 494 (1965).

[9] The relevant language of O.R.S. 2923.13 reads:

"No person shall by word of mouth or writing advocate or teach . . . "

Keyishian further found the use of the terms "advise" and "teach", also contained throughout Sec. 2923.13, to have infirmities similar to those it found in the term "advocate":

> "[I]n prohibiting 'advising' the 'doctrine' of unlawful overthrow does the statute prohibit mere 'advising' of the existence of the doctrine, or advising another to support the doctrine? Since 'advocacy' of the doctrine of forceful overthrow is separately prohibited, need the person 'teaching' or 'advising' this doctrine himself 'advocate' it? Does the teacher who informs his class about the precepts of Marxism or the Declaration of Independence violate this prohibition?" 385 U. S. at 600.

Sec. 2923.13 similarly encompasses the teacher who "knowingly circulate[s] written matter . . . advising unlawful acts". It cannot therefore withstand the requirements of *Keyishian.*

The same similarity of language is to be found between the public display section of Sec. 2923.13 and Sec. 161 of the New York Penal Law, which this Court consulted for definitions of words at issue in *Keyishian.* Under Sec. 161 advocacy of criminal anarchy consisted of

> "publically display[ing] any book . . . containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence, or unlawful means." 385 U. S. at 599.[10]

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[10] The relevant words in Sec. 2923.13 forbid one to

> "publically display any book . . . containing or advocating, advising or teaching the doctrine that industrial or political reform should be brought about by crime, sabotage, violence, or unlawful methods of terrorism."

Of these words, this Court asked:

> "Does the teacher who carries a copy of the Communist Manifesto on a public street thereby advocate criminal anarchy? It is no answer to say that the statute would not be applied in such a case. We cannot gainsay the potential effect of this obscure wording on 'those with a conscientious and scrupulous regard for such undertakings.' *Baggett* v. *Bullitt,* 377 U. S. 360 . . ." *Ibid.*

This Court made the same analysis of the language in *Keyishian* which prohibited "distribution" of such matter in the manner proscribed in Sec. 2923.13. See 385 U. S. at 601.

Finally, the statutes at issue in *Keyishian* barred employment of members of listed organizations. Sec. 2923.13 sweeps even more broadly, lacking a requirement of scienter and punishing those who become a "member of, or voluntarily assemble with any society, group or assemblage of persons formed to teach or advocate the doctrines of criminal syndacalism." This Court reaffirmed in *Keyishian* its view that "[m]ere knowing membership without a specific intent to further the unlawful aims of an organization is not constitutionally adequate." *Scales* v. *United States,* 367 U. S. 203 (1961); *Yates* v. *United States,* 354 U. S. 298 (1957). 385 U. S. at 606. See also *Aptheker* v. *Secretary of State,* 378 U. S. 500 (1964); *Elfbrandt* v. *Russell,* 384 U. S. 11 (1966).

Sec. 2923.13, so strikingly similar to the language disapproved in *Keyishian,* must also fall for vagueness and overbreadth. The Ohio statute is a broad regulation of speech of a kind long discredited by this Court. It is not narrowly

drawn so as to incorporate the teaching of *Noto* v. *United States,* 367 U. S. 290, 297-298 (1961) that "the mere abstract teaching of . . . theory, including the teaching of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action." If "[p]recision of regulation must be the touchstone in an area . . . closely touching our most precious [First Amendment] freedoms," *NAACP* v. *Button,* 371 U. S. 415, 438 (1963), Sec. 2923.13 cannot stand.

2. Sec. 2923.13 explicitly prohibits speaking, writing and publishing and thus directly infringes First Amendment rights. It is therefore unconstitutional unless construed and applied so that it is limited to situations in which there is a clear and present danger of an evil the state may prohibit. *Schenck* v. *United States,* 249 U. S. 47 (1919); *Abrams* v. *United States,* 250 U. S. 616 (1919); *Thornhill* v. *Alabama,* 310 U. S. 88 (1940); *Cantwell* v. *Connecticut,* 310 U. S. 296 (1940); *Pennekamp* v. *Florida,* 328 U. S. 331 (1946); *Craig* v. *Harney,* 331 U. S. 367 (1947); *Wood* v. *Georgia,* 370 U. S. 375 (1962). Since the Court of Appeals of Ohio specifically affirmed appellant's conviction and the Ohio Supreme Court *sua sponte* dismissed the appeal for lack of a substantial question,[11] appellant stands convicted for speech which the state failed to show

[11] Although appellant's case apparently presented the first opportunity for the Ohio Criminal Syndicalism Act to be applied to a set of facts, the Ohio courts chose not to place any delimiting interpretation on the statute. In *State* v. *Kassay,* 126 O. S. 177 (1932), the only prior case involving Sec. 2923.13, the trial court held that the statute violated the guarantee of free speech under the Ohio constitution. Under a procedure then in effect, the prosecuting attorney filed a bill of exceptions in the Ohio Supreme Court, allowing the question of the constitutionality of the Criminal Syndicalism Act to be brought up for decision as an abstract question,

had resulted in a clear and present danger or indeed in any danger at all.

The standards to which this Court has held the States respecting convictions affecting speech are the highest known to our law. In discussing the standard that has been most often applied to speech and association offenses, this Court has concluded:

> "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the decree of imminence extremely high before utterances can be punished. Those cases do not purport to mark the furtherest boundaries of protected expression . . . They do no more than recognize a minimum compulsion of the Bill of Rights." [12]

More recently this Court redefined its approach, rejecting government contentions that a "balancing" of government against individual interests was proper:

> "Faced with a clear conflict between a federal statute enacted in the interests of national security and an individual's exercise of his First Amendment rights, we

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unrelated to any fact situation. The majority upheld the act, though acknowledging that the purview of the First Amendment of the federal Constitution was broader than the comparable section in the Ohio Bill of Rights. *Id.* at 187. Its finding of constitutionality was based on the view that that First Amendment did not apply to the states—a view even then contrary to *Gitlow* v. *New York*, 268 U. S. 652 (1925). Since the *Kassay* case, there have been no reported decisions construing the Ohio Criminal Syndicalism Act, and it appears that there were no convictions thereunder until appellant's conviction.

[12] *Bridges* v. *California*, 314 U. S. 252, 263 (1941).

have confined our analysis to whether Congress has adopted a constitutional means in achieving its concededly legitimate legislative goal. In making this determination we have found it necessary to measure the validity of the means adopted by Congress against both the goal it has sought to achieve and the specific prohibitions of the First Amendment. But we have in no way 'balanced' those respective interests. We have ruled only that the Constitution requires that the conflict between congressional power and individual rights be accommodated by legislation drawn more narrowly to avoid the conflict. There is, of course, nothing novel in that analysis. Such a course of adjudication was enunciated by Chief Justice Marshall when he declared: 'Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not prohibited, but which consist with the letter and spirit of the constitution,* are constitutional.' *M'Culloch* v. *Maryland,* 4 Wheat 316, 421, 4 L ed 579, 605 (emphasis added by Supreme Court). In this case, the means chosen by Congress are contrary to the 'letter and spirit' of the First Amendment." [13]

The facts surrounding appellant's conviction render it unconstitutional under any standard put forth by this Court. In a meeting apparently staged for television, appellant solicited membership into the Ku Klux Klan and informed the television audience of a planned march. In the only reference even possibly construed as an allusion to violence he disclaimed revenge, though conceiving it pos-

[13] *United States* v. *Robel,* 389 U. S. 258, 268 n.20 (1967).

sible if "our President, our Congress, our Supreme Court continues [sic] to suppress the white, Caucasian race" (R. 15). There was no indication that this revenge—mentioned in the context of a political discussion—was not the usual political revenge normally pursued peacefully. Appellant was himself unarmed and neither advocated nor even referred to the use of arms.

Appellant's acts presented no danger to the state and certainly not the dangers recorded in prior cases where this Court nonetheless has upheld First Amendment rights. Appellant's speech was not "a general attack on all organized religious systems" of which there was evidence that "the hearers were in fact highly offended." *Cantwell* v. *Connecticut,* 310 U. S. 296, 309 (1939). There was no crowd of " 'muttering and grumbling' . . . onlookers". *Cox* v. *Louisiana,* 379 U. S. 536, 543 (1965), or " 'an actual interference with traffic and an imminently threatened disturbance of the peace of the community.' " *Edwards* v. *South Carolina,* 372 U. S. 229, 239 (1963). Nor does this case rise to the level this Court has required before a conviction for a speech may be sustained. Appellant did not speak "in a loud . . . voice . . . [giving] the impression that he was . . . urging that they rise up in arms and fight . . ." *Feiner* v. *New York,* 340 U. S. 315, 316, 317 (1950). A controversial word here and there during a peaceful, staged gathering where no violence was advocated does not deprive a speech or the meeting at which it occurs of First Amendment protection.

3. There was no evidence to sustain a conviction under Section 2923.13. Under the terms of the statute the state had the burden of showing advocacy, publication, organiza-

tion and assemblage,[14] to propagate criminal syndicalism, the doctrine defined under Ohio law as reform through violence. The state failed altogether in its burden, rendering appellant's conviction unconstitutional under the doctrine of *Thompson* v. *Louisville,* 362 U. S. 199 (1960). See also *Fields* v. *Fairfield,* 375 U. S. 248 (1963); *Garner* v. *Louisiana,* 368 U. S. 157 (1961).

The state chose to rest on the film and supplemental identification testimony. Yet neither the film nor transcript contain a scintilla of evidence of advocacy of reform through violence that would have satisfied count one. The evidence, as we have shown (pp. 5-7, *infra*), is to the contrary. Nor did the state attempt to satisfy that part of Sec. 2923.13 prohibiting voluntary assemblage with such a group, for it offered no proof of the purpose of the group assembled or of the Klan, as required to meet count two.

In *Fiske* v. *Kansas,* 274 U. S. 380 (1927) this Court invalidated a conviction under the Kansas Criminal Syndicalism Act containing language paralleling the Ohio statute at issue here. At trial, the only evidence offered of criminal syndicalism was the preamble of the organization's constitution advocating, *inter alia* that " 'between [the working class and the employing class] a struggle must go on until the workers of the world organize as a class, take possession of the earth, and the machinery of production and abolish the wage system' " 274 U. S. at 382-383. This Court said unanimously:

> "Consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime.

[14] The trial court gratuitously offered a charge in conspiracy, in the absence of conspiracy language from the statute, the indictment, or as part of the state's proof (R. 216-217).

> The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge." 299 U. S. at 365.

DeJonge v. *Oregon,* 299 U. S. 353, 359 (1937), held that it was no crime for a speaker to urge attendance at a "meeting of the [Communist] party . . . and to bring their friends, to show their defiance of local police authority and to assist them in their revolutionary tactics." Can it therefore be illegal today to announce a peaceful march on Congress and on two Southern states, or even to suggest that some unnamed revenge may follow if the government doesn't change, or to express dislike for certain minority groups in a derogatory manner? Whatever the generally held view of the Klan, the state is held to its proof, especially where the crime charged consists of words and alleged association. The prosecution failed altogether to meet the most minimal evidential standards.

CONCLUSION

For the reasons stated above, jurisdiction should be noted.

Respectfully submitted,

ALLEN BROWN
911 First National Bank Bldg.
Cincinnati, Ohio 45202

MELVIN L. WULF
ELEANOR HOLMES NORTON
156 Fifth Avenue
New York, N. Y. 10010

DAVID L. STERLING
BERNARD A. BERKMAN
Of Counsel

APPENDIX

APPENDIX

Judgment Entry of the Supreme Court of Ohio

THE SUPREME COURT OF THE STATE OF OHIO

1968 Term

To wit: June 12, 1968

No. 68-132

THE STATE OF OHIO
City of Columbus

STATE OF OHIO,

Plaintiff-Appellee,

—vs.—

CLARENCE BRANDENBURG,

Defendant-Appellant.

APPEAL FROM THE COURT OF APPEALS

For Hamilton County

This cause, here on appeal as of right from the Court of Appeals for Hamilton County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent

to the Common Pleas Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Hamilton County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court
this day of 19

/s/ THOMAS L. STARTZMAN, Clerk

Judgment of Affirmance

IN THE

COURT OF APPEALS

FIRST APPELLATE DISTRICT

HAMILTON COUNTY

OHIO

No. 10147

STATE OF OHIO,

Plaintiff-Appellee,

—VS.—

CLARENCE BRANDENBERG,

Defendant-Appellant.

This cause came on for hearing upon the appeal on questions of law, assignments of error, bill of exceptions, the transcript and the original papers and pleadings from the Court of Common Pleas of Hamilton County, Ohio, and was argued by counsel, on consideration whereof, the Court finds there is no error apparent on the record in said proceedings and judgment, prejudicial to Appellant.

It is, therefore, considered by the Court that the judgment of the Court of Common Pleas be, and the same hereby is, affirmed, and that Appellee recover from the Appellant, his costs herein expended, taxed at $.

And the Court being of the opinion that there was reasonable grounds for this appeal, allow no penalty.

It is further Ordered that a special mandate be sent to the Common Pleas Court of Hamilton County, Ohio, for execution upon this judgment. To all of which Appellant, by his counsel, excepts.

* * * * *

To the Clerk:

This judgment is approved. Enter upon the journal of the court.

JUDGE BERT H. LONG
Presiding Judge